

1 SAN FRANCISCO, CALIFORNIA, NOVEMBER 10, 2010

2 2:00 P.M.

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4 ADMINISTRATIVE LAW JUDGE MINKIN: Good  
5 afternoon. Please come to order.

6 This is the time and place for oral  
7 argument in Application 04-09-019, Phase 2,  
8 which is the Coastal Water Project.

9 To remind you, there have been  
10 several e-mails going back and forth, but we  
11 will start with the Settling Parties, who  
12 have 25 minutes. We will move then to the  
13 opposing parties, who have 25 minutes, and  
14 then the Settling Parties have 10 minutes for  
15 rebuttal.

16 As I understand it, Mr. Fogelman  
17 will begin for Marina Coast Water District,  
18 followed by Mr. McGlothlin for the Monterey  
19 Peninsula Cities, excluding Monterey,  
20 Mr. Carroll for the Monterey County Resources  
21 Agency, and Ms. Venskus --

22 MR. FOGELMAN: Your Honor, apparently  
23 Ms. Venskus is a little bit late, may have  
24 taken a wrong train on BART. In the event  
25 she doesn't arrive in time, someone from  
26 Surfrider will be prepared to give her  
27 remarks for the remaining Settling Parties.

28 ALJ MINKIN: Very good.

1 Followed by Ms. Dolqueist for  
2 Cal-Am.

3 And, Ms. McCrary, as I understand  
4 it, the Settling Parties have divided time,  
5 DRA for 15 minutes, I understand the City of  
6 Monterey would like a minute or two, and  
7 Mr. Laredo, you will follow for the Water  
8 Management District with approximately  
9 nine minutes or so.

10 MR. CARROLL: So the record is clear,  
11 you said Settling Parties, which I think is a  
12 misstatement.

13 ALJ MINKIN: Opposing parties. Thank  
14 you.

15 MR. CARROLL: Thank you.

16 ALJ MINKIN: All right. Any questions?

17 (No response)

18 ALJ MINKIN: Commissioner Bohn.

19 COMMISSIONER BOHN: Thank you.

20 I want to welcome everybody here.  
21 It's been a long road so far. We like to  
22 think we are closing in on some finality  
23 here. I want to again thank all of you for  
24 what I know are countless hours and countless  
25 degrees of angst over the process. It is  
26 important that this kind of process take  
27 place so that all the parties have an  
28 opportunity to express themselves so they

1 have a chance to both know each other and to  
2 know what each of them thinks. It is really  
3 important that we move this to conclusion for  
4 all of the reasons that you all know.

5 But again, I want to thank you for  
6 your patience and participation. I look  
7 forward to the arguments.

8 ALJ MINKIN: All right. Thank you.

9 Without further ado, Mr. Fogelman.  
10 You have nine minutes.

11 MR. FOGELMAN: Thank you, your Honor.

12 ARGUMENT OF MR. FOGELMAN

13 MR. FOGELMAN: Good afternoon,  
14 Commissioner Bohn and ALJ Minkin.

15 We want to thank ALJ Minkin and  
16 Commissioner Bohn and his staff for the  
17 extraordinarily hard work that obviously went  
18 into the PD and APD and consistently  
19 facilitating this proceeding and moving it  
20 along.

21 In 1995 the State Water Resources  
22 Control Board ruled in its Order 9510 that  
23 Cal-Am was unlawfully taking the majority of  
24 its Monterey water supply from the Carmel  
25 River and ordered Cal-Am to find another  
26 water source.

27 In 1998 the California Legislature  
28 enacted and the Governor signed into law AB

1 1182 which directed this Commission to assist  
2 Cal-Am in finding an environmentally sound  
3 water supply solution.

4 And then last year the State Water  
5 Resources Control Board imposed on Cal-Am a  
6 mandatory deadline requiring it to resolve  
7 the water supply issue by 2016 or lose the  
8 majority of its water supply.

9 Failure to comply with this order  
10 could also engender serious enforcement  
11 action and possibly large financial  
12 penalties.

13 So now after many years of failure,  
14 the stars have aligned and the Commission is  
15 now faced with a fleeting opportunity. There  
16 is now before the Commission a settlement  
17 agreement and a water purchase agreement that  
18 will successfully resolve the water supply  
19 crisis that has long plagued the Monterey  
20 Peninsula.

21 The agreements were reached, as you  
22 know, after thousands of person hours of  
23 costly and painful negotiations between  
24 stakeholders, including Commission sponsored  
25 ADR. The agreements represent a balance of  
26 many diverse interests and are supported by  
27 applicant Cal-Am, the Monterey County Board  
28 of Supervisors, individual state and federal

1 public officials, the participating local  
2 public agencies, city governments,  
3 environmental groups, public interest groups,  
4 ratepayer representatives and many members of  
5 the public at large.

6 The agreements provide the basis for  
7 a unique and unprecedented public/private  
8 partnership which most Monterey County  
9 citizens believe is the only proper way to  
10 address the Peninsula's water supply  
11 problems.

12 The Settling Parties have repeatedly  
13 and consistently asked the Commission to  
14 approve the settlement without material  
15 modification.

16 We believe that the Commission  
17 should be allowed to vote on the settlement  
18 we submitted to the Commission.  
19 Unfortunately, however, neither the PD nor  
20 the APD allows the Commission to vote that  
21 settlement up or down.

22 Each of the recommended decisions  
23 places before the Commission a project with  
24 terms significantly different from those  
25 agreed upon by the Settling Parties.

26 Both proposed decisions modified the  
27 settlement without the Commission's or the  
28 Settling Parties' agreement to the changes

1 and take from this Commission the ability to  
2 consider whether the settlement as written is  
3 reasonable in light of the whole record,  
4 consistent with law and in the public  
5 interest.

6 The modifications contained in the  
7 PD and APD make both proposed decisions  
8 unworkable and unacceptable to the Settling  
9 Parties.

10 If either of the proposed decisions  
11 is approved as written, the Regional  
12 Desalination Project will not go forward.

13 The APD imposes fewer modifications  
14 than the PD and for that reason we will not  
15 discuss the PD.

16 The Settling Parties believe that  
17 the APD can be revised to approve the  
18 settlement agreement and Water Purchase  
19 Agreement without material modification. The  
20 Settling Parties intend in their comments to  
21 request such revision of the APD.

22 Other parties will have an  
23 opportunity to comment on the proposed  
24 revision in their reply comments.

25 Under Commission Rule 14.1 a  
26 recommended Decision which is revised based  
27 on written comments does not constitute a new  
28 APD and does not require a further comment

1 period.

2 We respectfully urge the Commission  
3 to adhere to its normal policy in assessing  
4 settlements. Normally, the Commission  
5 considers each settlement provision, quote:  
6 in light of strong public policy  
7 favoring settlements and does not  
8 base its conclusion on whether any  
9 single provision is the optimal  
10 result. Rather, the Commission  
11 determines whether the settlement as  
12 a whole produces a just and  
13 reasonable outcome.

14 End quote.

15 The Commission has said that, quote:  
16 The purpose of its issue-by-issue  
17 review is not to second guess the  
18 settlement outcome for every  
19 individual issue but to assess  
20 whether the settlement as a whole is  
21 reasonable in light of the entire  
22 record, consistent with the  
23 applicable law, and in the public  
24 interest.

25 End quote.

26 And the Commission has stated that  
27 it, quote:  
28 does not unravel a settlement unless

1           there is a significant problem with  
2           the outcome as a whole.

3       End quote.

4           This approach encourages settlements  
5       and avoids undermining the incentive for  
6       parties to undertake the time and effort to  
7       settle matters because the key terms a party  
8       negotiates would be rendered meaningless.

9           In accordance with its own stated  
10       principles, the Commission should have the  
11       opportunity to vote on the settlement that  
12       the Settling Parties moved the Commission to  
13       approve.

14           Now, neither one of the other  
15       project alternatives before the Commission,  
16       Moss Landing and North Marina, is an option.  
17       Neither alternative is lawful or feasible.  
18       And even if one of those alternatives could  
19       lawfully be constructed, it would not be  
20       constructed in time to meet the 2016 deadline  
21       or for years after that.  
22       Moreover, there is unrebutted, highly  
23       conservative expert economic testimony  
24       presented in the record that concludes that  
25       the failure to have a project in operation by  
26       the 2016 deadline will result in adverse  
27       economic impacts to the Monterey Peninsula of  
28       more than one billion dollars per year and



1 the loss of more than 6,000 jobs.

2 Adverse impacts on the entire County  
3 of Monterey are also discussed in the record.  
4 There is not adequate time to address all the  
5 specifics of the material modifications  
6 caused by the current PD and APD.

7 MCWRA and Cal-Am will touch on some  
8 of those issues in their arguments, and MCWD  
9 will provide more detail in its comments.  
10 Suffice it to say that none of the following  
11 modifications is workable or acceptable to  
12 Marina Coast and its partners:

13 One, requiring that Marina Coast  
14 make a 25 million dollar upfront contribution  
15 to the project before it has collected any  
16 fees for new connection in accordance with  
17 its standard procedures;

18 Two, reducing the amount of the  
19 proposed project facilities construction cost  
20 cap by subtracting the 25 million dollar  
21 upfront contribution required of Marina  
22 Coast;

23 Three, requiring that Marina Coast  
24 increase its 22 million dollar fees limit by  
25 \$3 million in intangible benefits that are  
26 not supported or addressed on the record;

27 Four, requiring that there be two  
28 separate cost caps or ceilings on the

1 construction costs both for the Public  
2 Agencies' project facilities and the  
3 Cal-Am-only facilities, cost caps which, if  
4 exceeded, would require return to the  
5 Commission for further approval and would  
6 most likely render the project unbondable and  
7 unbuildable;

8 Five, requiring the financing  
9 interest rate be kept at 6 percent and the  
10 debt coverage ratio be kept at 1 percent,  
11 both of which are without support in the  
12 record and would also make the project  
13 unbondable and unbuildable;

14 And six, requiring a future  
15 Commission proceeding to address  
16 reasonableness of the O&M costs incurred by  
17 the public agencies which would also make the  
18 project unbondable and unbuildable.

19 The Settling Parties submit that  
20 the concerns that motivated these  
21 modifications are already adequately  
22 addressed by the settlement agreement and the  
23 Water Purchase Agreement. The Commission  
24 should approve both of those agreements  
25 without material modification.

26 Thank you for your attention.

27 COMMISSIONER BOHN: Mr. Fogelman, may  
28 I ask two questions. Number one, you say in

1 your comments that even though our normal  
2 practice is to approve the settlement as  
3 written, this is a, quote, and I am using  
4 your words, unique situation, did you not say  
5 that?

6 MR. FOGELMAN: Yes, I did.

7 COMMISSIONER BOHN: If it is unique  
8 situation, then one might be forgiven from  
9 departing from the usual, would one not, in  
10 the normal use of the English language?

11 MR. FOGELMAN: Yes, and let --

12 COMMISSIONER BOHN: Thank you. That's  
13 all.

14 ALJ MINKIN: Mr. Fogelman, let me  
15 follow that up.

16 In your experience here at the  
17 Commission, have you observed that the  
18 Commission has modified settlement agreements  
19 in the past?

20 MR. FOGELMAN: Yes, your Honor. I  
21 would say that under 1001 of the Public  
22 Utilities Code this Commission does have  
23 conditioning authority and can impose  
24 conditions on any rulings it makes which are  
25 just and reasonable. However, it seems to me  
26 that that needs to be the exception rather  
27 than the rule.

28 And in this particular situation

1 where the parties butted heads for many, many  
2 months, spent many, many hours trying to  
3 achieve a solution which they genuinely  
4 believe addresses all of the issues which are  
5 of concern to the Commission, we think the  
6 Commission is entitled to vote that agreement  
7 up or down.

8 ALJ MINKIN: Let me also ask you  
9 whether -- you may not be able to address  
10 this -- but as I understood it, the Settling  
11 Parties have requested the opportunity to  
12 consider any modification should they be  
13 imposed by the Commission and then at that  
14 point the Settling Parties would respond to  
15 the Commission.

16 Now, as you know, in the ruling that  
17 I issued that accompanied the Proposed  
18 Decision and the Alternate Proposed Decision,  
19 Settling Parties do in fact have the  
20 opportunity to comment on whether the  
21 modifications are acceptable to the boards of  
22 the relative parties or not.

23 Is there an intent to go back to  
24 those boards?

25 MR. FOGELMAN: Your Honor, you've hit  
26 the nail on the head with one of the issues,  
27 one of the problems that we find ourselves  
28 now facing, and that is that although

1 commonly if a settlement is not accepted --  
2 if it is either rejected or changed in some  
3 fashion, you can see if the parties will  
4 accept the changes. The problem is that the  
5 political climate has changed in Monterey  
6 County, and with respect to the progress of  
7 this proceeding under CEQA, it seems to the  
8 parties to make more sense, and they kind of  
9 set it up this way, they went back in April,  
10 they got the approval of their boards for a  
11 settlement agreement, they can make changes  
12 that are not material and do not require a  
13 return to their boards. But at this juncture  
14 we believe that the Commission's action of  
15 approving or disapproving, which we hope will  
16 be very soon, will be the final action, and  
17 we hope certainly that that will be an  
18 approval.

19 But the feeling is that going back  
20 to the boards will be a very high risk  
21 situation.

22 And furthermore, the concessions  
23 that have been made, as you know, the parties  
24 reached a settlement, then they were in ADR,  
25 then in May they filed some clarifications  
26 and other changes to improve the settlement  
27 in light of the expressions of the other  
28 parties. And even as recently as the

1 governance issue and Appendix A to MCWD's  
2 reply brief being filed, they made changes.  
3 But those were not material changes.

4 And at this juncture I think the  
5 parties are uniformly in agreement that the  
6 settlement process here cannot tolerate  
7 material modifications.

8 ALJ MINKIN: And let's just assume for  
9 the sake of argument that the Commission  
10 decided to vote out either the PD or the APD  
11 with the modifications that are in place now.  
12 At that point would the parties go back to  
13 their respective boards?

14 MR. FOGELMAN: Your Honor, I can't  
15 speak directly for my client nor can any of  
16 the attorneys making presentations before  
17 you. So my clients could overrule anything  
18 that I might say. But let me say that I am  
19 authorized to state to you that the signing  
20 out of the PD or the APD as they are  
21 currently written essentially will end the  
22 process here.

23 As I say, the parties believe they  
24 can tolerate nonmaterial modifications. But  
25 if the modification is material, it will  
26 change the deal in a way that is not  
27 acceptable.

28 ALJ MINKIN: Thank you.

1                   Mr. Bohn, any other questions?

2                   (No response)

3                   ALJ MINKIN: Mr. McGlothlin.

4                   ARGUMENT OF MR. MC GLOTHLIN

5                   MR. MC GLOTHLIN: Thank you, your Honor  
6 and Commissioner Bohn, for the opportunity to  
7 address the Commission.

8                   My comments are brief, but they are  
9 intended with much sincerity from the Cities  
10 that I represent.

11                  They have three points they want to  
12 make today.

13                  As they have said all along, they  
14 support the project. The need is well known  
15 by all. And the Cities more than virtually  
16 any entity in this proceeding is going to  
17 feel the direct effects of whether or not  
18 this project is approved or not.

19                  Second, they object to any  
20 modifications to the WPA or settlement  
21 agreement that would further frustrate the  
22 project design, financing or construction or  
23 delay the project.

24                  And lastly, they urge this  
25 Commission for those reasons to approve the  
26 project as proposed with the modifications in  
27 Appendix A to the reply brief of Marina Coast  
28 Water District at your December Commission

1 board meeting. ]

2 ALJ MINKIN: Thank you.

3 Mr. Carroll.

4 ARGUMENT OF MR. CARROLL

5 MR. CARROLL: Thank you, your Honor and  
6 Commissioner Bohn.

7 Good afternoon. I'm Dan Carroll  
8 and I represent the Monterey County Water  
9 Resources Agency. MCWRA will own and operate  
10 the brackish source water wells that will  
11 provide the water to be desalinated, the vast  
12 majority of which will be delivered to Cal-Am  
13 for its Monterey district customers.

14 MCWRA also wishes to express its  
15 gratitude to you, Commissioner Bohn, and you,  
16 ALJ Minkin, as well as your advisors and  
17 staff that have been working with you very  
18 hard to get this taken care of, and also for  
19 the opportunity to speak here today.

20 MCWRA and the other settling  
21 parties repeatedly requested the Commission  
22 to approve the settlement without  
23 modification. Instead, both the PD and APD  
24 require material modifications to the WPA and  
25 settlement agreement.

26 These modifications create grave  
27 concern as to the future of the project.  
28 Negotiating the WPA and receiving approval



1 for MCWRA's participation in it was  
2 a difficult process. MCWRA seriously doubts  
3 that it can obtain approval of any material  
4 modifications to the WPA.

5 Like MCWD, on behalf of MCWRA  
6 I will focus on the APD, which may be  
7 acceptable if certain changes are made.  
8 I will concentrate generally on three, and  
9 address the rest in written comments.

10 First, costs.

11 The APD focuses on costs in areas  
12 such as cost caps and the financing plan.  
13 But cost concerns are already addressed in  
14 several ways.

15 The public agencies are legally  
16 required to expend funds reasonably and  
17 cannot make gifts of public funds.

18 In addition, the record shows  
19 the public agencies are subject to extensive  
20 and serious local accountability. And that  
21 local accountability is enhanced by  
22 the inclusion of a municipal advisor to  
23 represent the interests of Monterey  
24 Peninsula citizens.

25 The WPA also focuses on costs, and  
26 does so in a way that meets the APD's  
27 concerns about costs. The WPA contains many  
28 provisions designed to control costs and to

1     require only reasonable expenditure of funds  
2     on the project.

3             The WPA parties are bound by  
4     Section 11.2(d) to expend funds on  
5     the project only reasonably and prudently.  
6     That section mandates that all costs to the  
7     WPA parties "shall be reasonably and  
8     prudently incurred."

9             That's a covenant in a contract;  
10     and if breached, could subject someone to  
11     breach of contract liability.

12             The WPA contains provisions sending  
13     cost issues, including annual O&M costs, to  
14     an independent third party for decision if  
15     the WPA parties cannot unanimously agree on  
16     the annual O&M budget.

17             The WPA also has provisions that  
18     provide for constructability review, value  
19     engineering, and competitive procurement  
20     requiring the source water wells to maximize  
21     salinity in the source water, which leads to  
22     lower water costs because less water is  
23     delivered to MCWD, and providing all WPA  
24     parties access to each other's records, and  
25     specifically gives Cal-Am access to our  
26     records, the public agency records, in order  
27     to obtain information to provide to the  
28     Commission regarding costs.

1           Next, the public agencies'  
2     financing plan.

3           The APD requires Commission review  
4     of the reasonableness of the financing plan  
5     unless it has an interest rate of 6 percent  
6     or less, a debt coverage ratio of no more  
7     than 1.0, and State Revolving Fund financing.

8           The interest rate and debt coverage  
9     ratio are both inputs to the Unified  
10    Financing Model -- a model used for  
11    hypothetical cost comparison -- and  
12    the number 6 percent and 1.0 were  
13    illustrative numbers used in examples run  
14    through that model.

15          The interest rate is a concern  
16    simply because we cannot know what that rate  
17    will be. As the water management district's  
18    witness Mr. Stoldt testified, the cost of  
19    debt will be what the cost of debt will be.

20          The record also does not support  
21    the debt coverage ratio requirement.  
22    A coverage ratio of 1.0 means that there is  
23    no debt payment reserve set aside. Such  
24    a reserve is a common requirement. There's  
25    testimony about that in the record.

26          There is no evidence that  
27    the public agencies can actually finance  
28    the project with a coverage ratio of 1.0.

1 That is with no debt payment reserve.

2 We are concerned the public  
3 agencies cannot obtain such financing. That  
4 means a review will be required under  
5 the APD, which would delay a project that  
6 cannot stand delay, as well as add costs  
7 because of the delay.

8 Third, jurisdiction.

9 The APD says in a number of places,  
10 which we will discuss in our comments, that  
11 the Commission does not have or does not  
12 assert jurisdiction over the public agencies.  
13 But then in a number of instances, the APD  
14 basically directs the public agencies. These  
15 areas must be changed to make it clear the  
16 Commission is not exercising jurisdiction  
17 over the public agencies.

18 One example of this is the  
19 financing plan.

20 The financing plan called for in  
21 the WPA is the financing plan of the public  
22 agencies. The APD purports to require  
23 a certain kind of public agency financing  
24 plan and if that is not forthcoming purports  
25 to allow the Commission to review  
26 the reasonableness of the public agencies'  
27 financing plan.

28 That is not how a public-private

1 partnership works. Such a partnership  
2 proceeds under parallel regulatory authority.

3 Here, the Commission lacks  
4 authority to require any specific financing  
5 plan of the public agencies or to review  
6 the reasonableness of the plan.

7 To conclude, if the Commission  
8 really wants public-private partnerships --  
9 and it is going to need them in the critical  
10 area of water supply in California -- it must  
11 be willing to step outside its historical  
12 regulatory comfort zone and trust that public  
13 agencies who partner with private utilities  
14 will do the right thing. And it must do that  
15 to allow this project to be built and solve  
16 Monterey's water crisis.

17 This project is needed now. Please  
18 approve the settlement agreement and WPA  
19 without material modification.

20 Thank you very much.

21 ALJ MINKIN: Thank you.

22 Commissioner Bohn, did you have any  
23 questions?

24 COMMISSIONER BOHN: No, not at this  
25 time. I've got a couple floating around back  
26 here but I'll think about them for a while.

27 ALJ MINKIN: I actually have a couple  
28 for you --

1 MR. CARROLL: Very well.

2 ALJ MINKIN: -- Mr. Carroll.

3 You said, I believe, that Section  
4 11.2 of the WPA provides that all costs will  
5 be reasonably and prudently incurred.

6 MR. CARROLL: Yes.

7 ALJ MINKIN: And that Cal-Am will have  
8 access to I assume both Marina Coast Water  
9 District's books and records and WRA's books  
10 and records.

11 MR. CARROLL: Yes. That's in Section  
12 11.12.

13 ALJ MINKIN: Point 12. Thank you.

14 Would you envision then Cal-Am  
15 being able to furnish that information to the  
16 Commission?

17 MR. CARROLL: Absolutely.

18 ALJ MINKIN: All right. You also  
19 mentioned --

20 MR. CARROLL: As a matter of fact, your  
21 Honor, if I may.

22 ALJ MINKIN: Please.

23 MR. CARROLL: That's why it's there.

24 ALJ MINKIN: Okay.

25 MR. CARROLL: We had these things in  
26 mind when we wrote all those sections of the  
27 WPA. We're not trying to hide anything or  
28 spend money wrong. We're trying to do things

1 right.

2 ALJ MINKIN: I'm sure we appreciate  
3 that.

4 I think that we need to have an  
5 understanding of how all of this plays out to  
6 also ensure that Cal-Am ratepayers are  
7 protected in this public-private  
8 partnership --

9 MR. CARROLL: Yes, your Honor.

10 ALJ MINKIN: -- that's proposed.

11 You also mentioned that the debt  
12 coverage reserve of 1.0 is problematic.

13 Now, of course, that was a figure  
14 that was included in the Unified Financing  
15 Model as was debt reserve or a coverage  
16 reserve of 1.25.

17 MR. CARROLL: That's correct.

18 ALJ MINKIN: And as I understand it,  
19 those were the only two numbers that were  
20 proposed in the record for debt reserve. Is  
21 that your understanding?

22 MR. CARROLL: I'm not sure I actually  
23 agree with it, your Honor, because they were  
24 in the Unified Financing Model that was  
25 submitted, but they were plug numbers. You  
26 could also get -- but believe me, I couldn't;  
27 I can't come near an Excel spreadsheet  
28 without dying -- but someone who knows what

1 they are doing could put a 1.1 in there or  
2 1.2, or a 1.15 and see what that yielded as  
3 well.

4 And my understanding from talking  
5 to the people who did this -- and a number of  
6 people worked on putting together the Unified  
7 Financing Model from all the parties -- is  
8 that those were illustrative numbers. And so  
9 I think that you could use a number if you  
10 wanted to.

11 But the key point I think is  
12 without a debt reserve, it's going to be  
13 difficult to get financing.

14 ALJ MINKIN: Understood. However, of  
15 course, as you know from reading both the  
16 Proposed Decision and Alternate Proposed  
17 Decision, the debt reserve obviously has an  
18 influence on the revenue requirements that --

19 MR. CARROLL: It does, but so will --

20 ALJ MINKIN: -- that are ultimately  
21 required.

22 MR. CARROLL: I'm not an expert on this  
23 but my understanding is that if you could get  
24 someone to give you a non-debt reserve  
25 bit of financing on revenue bonds,  
26 the interest rate would go up. So there's no  
27 free lunch.

28 ALJ MINKIN: One final question.



1           In terms of your jurisdictional  
2 concerns, will the financing plans that are  
3 ultimately agreed to be reviewed by the  
4 boards of the various public agencies, to  
5 your knowledge?

6           MR. CARROLL: They will be.

7           And besides that, we have had  
8 discussions about this and tried to find ways  
9 that this might -- that some of the concerns  
10 might be met without having to modify the  
11 WPA. And we think it might make sense for  
12 the financing plans to be submitted to an  
13 independent third party and to obtain  
14 a report from that and submit that report to  
15 the Commission.

16           What we don't want is being told  
17 what to do. It's different to do that and  
18 say, This is what some expert says about our  
19 financing plan and why it's workable or not  
20 workable.

21           ALJ MINKIN: Who would that independent  
22 third party be?

23           MR. CARROLL: That person would have to  
24 be chosen.

25           Someone gave me the names and  
26 I don't know them.

27           Piper Jaffray would be one of them,  
28 and there's another one whose name -- for

1 Southwest. And Piper Jaffray are the two  
2 possibilities that we're thinking of now.

3 ALJ MINKIN: Is there a proposal then  
4 to amend the record at this point?

5 MR. CARROLL: I think we'd have to see  
6 whether you want us to do that.

7 MR. FOGELMAN: Your Honor, if I could  
8 supplement that.

9 I think the parties view this as  
10 sort of an operational decision. They're  
11 doing it not only to give greater assurance  
12 to anyone looking at the very transparent  
13 process, but also to be -- because it's  
14 the prudent thing to do.

15 I think the parties intend to do it  
16 whether it's required or not. We're just  
17 submitting that it ought not to be  
18 specifically required if it's a material  
19 modification of the agreements.

20 MR. CARROLL: And let me supplement  
21 that, and I appreciate Mr. Fogelman pointing  
22 that out because that was something I was  
23 going to say as well, which is there are  
24 things that could be done under the WPA as  
25 written that are operational in nature that  
26 don't require the WPA to be changed in  
27 something like asking a third party to look  
28 at a financing plan, that sort of thing.

1 That's different from writing it in the WPA.

2 ALJ MINKIN: Thank you.

3 Ms. Venskus.

4 ARGUMENT OF MS. VENSKUS

5 MS. VENSKUS: Good afternoon. My name  
6 is Sabrina Venskus, and I'm here representing  
7 a number of parties to the settlement  
8 agreement: Surfrider Foundation, Monterey  
9 Regional Water Pollution Control Agency,  
10 the Public Trust Alliance, and Citizens For  
11 Public Water. And I'm here to say that  
12 we're -- we, these groups, are happy with the  
13 settlement agreement as is, and we believe  
14 the settlement agreement represents  
15 a carefully crafted and long, hard fought  
16 compromise between the settling parties.

17 And I'll also note and point out  
18 that Public Trust Alliance is happy with it  
19 because Public Trust Alliance believes that  
20 the settlement agreement as it's written is  
21 fully consistent with the public trust  
22 doctrine.

23 The settlement agreement as  
24 currently written protects the environment  
25 and ensures public participation and  
26 representation as does the PD and APD.  
27 However, unlike the current settlement  
28 agreement, the PD and APD as written may make

1 the Regional Project infeasible to implement.  
2 And so therefore, it's Surfrider's and the  
3 other parties that I mentioned position that  
4 the PD and APD are the environmentally  
5 inferior alternatives to Regional Project.

6 It's important to point out that  
7 the imperative environmental protections that  
8 Surfrider has worked so hard and advocated  
9 for throughout this proceeding won't be  
10 achieved in the absence of a Regional  
11 Project. So that is why we are here today to  
12 advocate that the Commission adopt  
13 the settlement agreement as written because  
14 we believe that the environmental protections  
15 will be best advanced that way.

16 If we don't have a Regional Project  
17 then we don't have the environmental  
18 protections that we've worked so hard for.  
19 So that's why we take that position.

20 We believe that by only advancing  
21 the PD and APD to the Commission here which  
22 don't have the support of most every party to  
23 this case where as the settlement agreement  
24 does have the support of almost all parties  
25 to this proceeding, then that the viability  
26 of the Regional Project and including  
27 the public participation part of it is  
28 jeopardized. So we're really concerned.

1           I think that that's -- that really  
2   kind of encapsulates our position. And we  
3   again, I just, just to hit home that message,  
4   that we would like the Commission to consider  
5   the settlement agreement including the water  
6   purchase agreement as currently written.

7           COMMISSIONER BOHN: Could you outline  
8   just briefly to me how either the PD or  
9   the APD is, quote, in your terms,  
10   environmentally inferior.

11          MS. VENSUS: Well, it's  
12   environmentally inferior because from our  
13   perspective based on our conversations with  
14   the implementing parties that it puts in  
15   jeopardy the approval of the Regional Project  
16   because the Regional Project is -- because  
17   the Regional Project as currently considered  
18   in the settlement agreement terms that  
19   that -- that the Regional Project is  
20   therefore feasible.

21          So what I'm saying here is that if  
22   the APD and/or the PD are not workable for  
23   the implementing parties, then that  
24   essentially puts us back to square one, which  
25   we don't want to be at, and that's the reason  
26   why.

27          COMMISSIONER BOHN: Got it.

28          ALJ MINKIN: Thank you.

1 Ms. Dolqueist.

2 ARGUMENT OF MS. DOLQUEIST

3 MS. DOLQUEIST: Good afternoon,  
4 Commissioner Bohn, your Honor. I'm Lori Anne  
5 Dolqueist, and I'm here to speak on behalf of  
6 California-American Water.

7 California-American Water would  
8 like to thank both of you for all of the hard  
9 work you've done to get us to this point. We  
10 also appreciate the substantial efforts of  
11 the Commission staff and of all  
12 the participating parties.

13 This has been a long and complex  
14 proceeding. Now we stand on the cusp of  
15 a solution, one that has been years in the  
16 making. The stakes have never been higher  
17 and it's important to make sure that nothing  
18 is done in these final stages to jeopardize  
19 the project.

20 While we favor the Alternate  
21 Proposed Decision, even if adopted unchanged,  
22 will undermine the viability of the Regional  
23 Desalination Project. The company supports  
24 its public partners in asking that the  
25 Commission accept the settlement agreement  
26 and water purchase agreement with no material  
27 modifications.

28 California-American Water will

1 elaborate on the APD and the PD in its  
2 written comments. Today, however, I would  
3 like to discuss a few issues that hit closer  
4 to home. And these are the Tier 3 advice  
5 letters that are being required for recovery  
6 of purchased water and the California-  
7 American Water facilities, and also the  
8 consequences if the Regional Desalination  
9 Project fails.

10 Both the PD and the APD require  
11 the company to file a Tier 3 advice letter to  
12 recover the cost of the water it purchases  
13 from the Regional Desalination Project. And  
14 they also impose a similar Tier 3 filing on  
15 the twice yearly advice letters to recover  
16 the cost of the California-American Water  
17 facilities. They include directions to  
18 process these advice letters within 120 days  
19 but allow the staff to extend this deadline  
20 indefinitely.

21 The current average time to process  
22 the California-America Water Tier 3 advice  
23 letter is seven months. Since the PD and APD  
24 adds some additional documentation, these  
25 advice letters could take even longer. And  
26 the financial impact of such delays is  
27 significant.

28 The increased risk created by these

1 modifications could affect the cost and the  
2 terms of the financing of the project which  
3 would ultimately be paid for by  
4 the customers. If the advice letters for  
5 this project take the same amount of time as  
6 the current average for Tier 2 advice  
7 letters, the financial health of the company  
8 will be in jeopardy.

9 In particular, for the California-  
10 American Water facilities, the Commission  
11 must consider that the \$107 million project  
12 is an enormous investment when compared to  
13 the current Monterey District rate base of  
14 137 million. Given the size of the project,  
15 it's imperative that the Commission allow  
16 the company to timely recover its costs to  
17 avoid cash flow problems.

18 Furthermore, when the company is  
19 finally able to put these costs in rates, the  
20 delayed recovery has the potential to add  
21 millions to the overall cost of the project,  
22 even if there are no delays beyond  
23 the 120-day period.

24 In light of these risks, it's  
25 important that the Commission look at the  
26 type of costs that it is subjecting to this  
27 higher level of review. And these are  
28 purchased water costs and costs for



1 the California-American Water facilities that  
2 are under the cost cap for the project.

3 Under the settlement agreement, the  
4 company would recover the costs of the  
5 Regional Desalination Project purchased water  
6 through its existing modified cost balancing  
7 account as it does in other districts.

8 The Commission does not subject purchased  
9 water from other agencies to a Tier 3 level  
10 of review and it should not do so here.

11 The company is not seeking to duck  
12 review. For the California-American Water  
13 facilities, the settling parties have  
14 proposed a process similar to the  
15 Commission's Tier 2 advice letter process,  
16 although one with a longer review period.  
17 And this is appropriate because these are  
18 costs that the APD and APD have already  
19 determined are reasonable. These are costs  
20 that were extensively review in this  
21 proceeding and are under the cost cap.

22 Waiting to recover the costs until  
23 they have been incurred is already  
24 a substantial safeguard. The level of  
25 possible risk to customers does not justify  
26 jeopardizing with the Regional Desalination  
27 Project or the financial health of  
28 the company. California-American Water urges

1 the Commission to instead adopt  
2 the procedures developed by the settling  
3 parties.

4 In the end, the company estimates  
5 that with this project, the average  
6 residential customer bill could be in  
7 the range of \$80 to \$90 a month. However,  
8 failure to act now will cost even more.

9 The company is already subject to  
10 the cease and desist order. Without  
11 a long-term water supply solution if  
12 the company continues to divert water from  
13 the Carmel River to meet customers' needs, it  
14 will face the possibility of massive fines  
15 from the State Water Resources Control Board  
16 as well as additional fees and other  
17 consequences if it is unable to comply with  
18 the Seaside Basin adjudication.

19 The company will also risk  
20 Endangered Species Act fines and other  
21 penalties for potential endangerment to  
22 steelhead trout. It will be the customers  
23 who will sustain the most severe impacts  
24 through penalties or Draconian water  
25 rationing measures that severely impact  
26 the local economy.

27 The modifications to the  
28 settlement, if accepted, could be viewed by

1 investors as increasing the risk of  
2 the project and could make it difficult to  
3 obtain financing for the project at  
4 reasonable rates, thus increasing the total  
5 project cost or eliminating it altogether.

6 These modifications could also  
7 affect the financial performance of  
8 California-American Water and its risk  
9 profile, weakening its financial condition  
10 and increasing the company's cost of capital.

11 The Regional Desalination Project  
12 provides an innovative, public-private  
13 partnership solution. In evaluating the risk  
14 of jeopardizing the project, the Commission  
15 must not overlook the urgent need to move  
16 forward with the one feasible project that  
17 will allow the company to comply with the  
18 restrictions on the Carmel River and the  
19 Seaside Basin. ]

20 The company is concerned that if  
21 the Commission were to adopt the significant  
22 modifications suggested in the PD or the APD,  
23 it will jeopardize the success of the entire  
24 project.

25 California-American Water therefore  
26 urges the Commission to adopt the settlement  
27 agreement and Water Purchase Agreement with  
28 no material modifications.

1 Thank you.

2 ALJ MINKIN: Thank you.

3 Questions?

4 COMMISSIONER BOHN: No.

5 ALJ MINKIN: Ms. Dolqueist, you  
6 mentioned that you believe that customer  
7 bills could go up to 80 or \$90. Where are  
8 they now, to your understanding?

9 MS. DOLQUEIST: I will have to defer  
10 that to -- around 40, I believe.

11 ALJ MINKIN: So double or perhaps a  
12 little more than double. And, of course,  
13 we're not addressing rates associated with  
14 this project until Phase 3, but that's just  
15 your understanding of the potential impact;  
16 is that correct?

17 MS. DOLQUEIST: Yes, your Honor.

18 ALJ MINKIN: Thank you.

19 We are ready for DRA.

20 Off the record for a moment.

21 (Off the record)

22 ALJ MINKIN: Back on the record.

23 ARGUMENT OF MS. BROOKS

24 MS. BROOKS: Good afternoon,  
25 Commissioner Bohn and your Honor. My name is  
26 Diana Brooks. I represent the Division of  
27 Ratepayer Advocates.

28 We are advocating today on behalf of

1 the water ratepayers on the Monterey  
2 Peninsula.

3 I appreciate the opportunity to  
4 speak with you this afternoon regarding DRA's  
5 concerns on the Proposed Decision and the  
6 Alternate Proposed Decision.

7 Clearly, considerable effort has  
8 gone into crafting this compromise to a  
9 complex and challenging dilemma.

10 We are not prepared to address all  
11 of the changes we just heard this afternoon.  
12 We can do that in our comments and at the  
13 all-party meeting next week.

14 Our comments today are focused on  
15 the Proposed Decision and the Alternate  
16 Proposed Decision.

17 Understanding that the Commission  
18 needs to vote this out very soon, DRA prefers  
19 the Proposed Decision because it requires the  
20 municipal advisor to be granted full voting  
21 party status for purposes of decision making  
22 on the Regional Project. Max Gomberg is  
23 going to talk a little bit more about that in  
24 a couple minutes.

25 However, DRA has serious concerns as  
26 to the approach taken to cost containment in  
27 both the PD and the Alternate. This approach  
28 leaves too much uncertainty as to the revenue

1 requirement and the rate impacts faced by  
2 customers.

3 Cal-Am's current annual revenue  
4 requirement is approximately \$43 million.  
5 Under both the Proposed Decision and the  
6 Alternate the annual revenue requirement for  
7 the Regional Project alone can range from 44  
8 million to \$82 million a year even if costs  
9 come in under the initial capital cost cap.  
10 That is all due just to changes in finance.  
11 That's huge. The whole project could be  
12 twice as expensive just because of the  
13 financing.

14 If the upper cost cap is reached,  
15 the annual revenue requirement for the  
16 project could go as high as 95 million just  
17 for the project.

18 Cal-Am's annual revenue requirement  
19 should increase by no more than 44 million  
20 due to this project. That would be a  
21 doubling of rates.

22 DRA recommends that the Commission  
23 adopt the following safeguards, which I will  
24 describe, to ensure cost containment and  
25 equitable cost allocation.

26 Our changes would be modification to  
27 the financing plan, clarifying that the scope  
28 of the operations and maintenance proceeding

1 is broader than currently written, full  
2 reasonableness reviews if initial project  
3 cost caps are exceeded, greater transparency  
4 and accountability for the Marina Coast Water  
5 District contributions, and changes to the  
6 project governance structure.

7 First and foremost, let me address  
8 DRA's recommendations for the financing plan.  
9 We would alter it to create the incentive for  
10 the acquisition of grants and low-cost  
11 financing. Access to State Revolving Fund  
12 loans and grants are cornerstone of this  
13 project and have been touted as a key benefit  
14 for public agency participation. DRA  
15 recommends that the PD and the Alternate be  
16 revised to specify that the financing plan  
17 require \$150 million in State Revolving Fund  
18 loans. This is the number the Commission  
19 used in coming up with its cost estimates for  
20 both the revenue requirement and the  
21 per-acre-foot costs of the capital cost cap  
22 in both the PD and the Alternate.

23 If parties are unable to secure this  
24 funding and other debt terms as outlined in  
25 the PD and the Alternate, DRA recommends  
26 bifurcating the review of the financing plan  
27 into two parts. And this may address some of  
28 the parties' concerns. Let's see.

1           Part one of the financing plan would  
2 be a compliance filing giving the parties the  
3 green light to move ahead with issuing the  
4 non SRF portion of the debt, perhaps a  
5 hundred million or thereabout, as long as it  
6 meets the basic terms and conditions outlined  
7 in the PD and the Alternate. This will allow  
8 parties to move forward expeditiously,  
9 avoiding any delay on the necessary next  
10 steps for the Regional Project, while  
11 providing time and the incentive to secure  
12 the low-cost SRF financing and grants.

13           Part two of the financing plan,  
14 which will only require Commission review and  
15 approval if the public agencies are unable to  
16 secure 150 million in SRF loans and grants,  
17 would consist of an expedited review to  
18 approve further debt issuance and contain  
19 costs.

20           So we are trying to think of ways  
21 that the review of the financing plan at this  
22 time would not slow down the project and keep  
23 us on the critical path to being done in time  
24 to meet the state board deadline.

25           Turning to the operations and  
26 maintenance, DRA's second recommendation is  
27 that both draft decisions be revised to  
28 include consideration of the operations and



1 maintenance, contractor selection process,  
2 the criteria for selection of an experienced  
3 contractor, and the O&M terms within the  
4 proceeding's scope.

5 Currently, the Draft Decisions  
6 indicate that O&M costs will be reviewed in a  
7 subsequent proceeding. Because O&M costs are  
8 dependent on all of these, we feel that that  
9 scope should be broadened, and perhaps that  
10 was what was meant.

11 Because this desalination plant  
12 could be in operation for nearly a century,  
13 and O&M costs will make up a significant  
14 portion of the lifetime costs, it is crucial  
15 to ensure that the O&M contractor is well  
16 vetted, well qualified and have proper  
17 incentives to control costs.

18 And just to clarify, DRA is not  
19 saying that the Commission or DRA should  
20 approve the contractor; more, the criteria  
21 and the process that will be in place and the  
22 terms and conditions.

23 Recently DRA reviewed some data on  
24 recent desalination costs that was presented  
25 at the Water Research Foundation conference  
26 in Washington. It had some data from recent  
27 Australian plants that came in in the high  
28 \$2,000 per acre foot numbers. There were

1     some estimates for plants in California in  
2     the low 3,000's, including an estimate for  
3     the Regional Project. It was around \$3,200  
4     an acre foot.

5             What the Commission is proposing  
6     here, the Proposed Decision and the  
7     Alternate, indicate that with the proposed  
8     cost cap and the best case financing  
9     scenario, that the costs of water will be  
10    \$3400 an acre foot. The worst case scenario  
11    would result, according to the Decision, in  
12    product water of over \$9,000 an acre foot,  
13    nearly triple the highest costs for  
14    desalinated water that we are currently aware  
15    of.

16            ALJ MINKIN: Ms. Brooks, may I  
17    interrupt.

18            The figures you just referred to,  
19    are they in the record of this proceeding?

20            MS. BROOKS: I would have to  
21    double-check. I believe Rhodes Trussell  
22    presented some of that.

23            But if the worst case scenario  
24    occurs, it will be a setback for desalination  
25    in the United States for years to come. No  
26    one wants this to happen, and the Commission  
27    needs to make sure that adequate safeguards  
28    are in place to prevent this from happening.

1           DRA's cost containment proposals  
2 will help ensure the costs for the Regional  
3 Project do not go out of the ballpark for  
4 desalinated water costs. The cost for  
5 desalinated water, and there is also the cost  
6 of the Cal-Am facilities, and when we add  
7 that on, these costs become even greater for  
8 the customer who is paying.

9           Because there is no good alternative  
10 water supply, it is incumbent on the  
11 Commission to vigilantly oversee these  
12 project costs.

13           Furthermore, a Section 739.8 A of  
14 the Public Utilities Code states:

15           Access to an adequate supply of  
16 healthful water is a basic necessity  
17 of human life and shall be made  
18 available to all residents of  
19 California at an affordable cost.

20           The worst case scenario will not be  
21 affordable for many Monterey residents or  
22 businesses.

23           DRA has an additional safeguard to  
24 recommend should capital costs for this  
25 project for the Cal-Am facilities exceed the  
26 initial capital cost caps. DRA recommends  
27 that the Commission conduct a reasonableness  
28 review of the costs for the entire Regional

1 Project. In order to know whether additional  
2 Cal-Am ratepayer funding is justified and  
3 reasonable, the Commission will need to know  
4 how the funds already approved have been  
5 spent.

6 The Commission used this approach  
7 for the nuclear steam generator replacements  
8 for Diablo Canyon and SONGS, and the approach  
9 should be no different in this case.

10 I am now going to hand this over to  
11 Max who is going to speak about the municipal  
12 advisor and governance.

13 ALJ MINKIN: Thank you.

14 ARGUMENT OF MR. GOMBERG

15 MR. GOMBERG: Commissioner, your Honor,  
16 DRA believes that the Proposed Decision and  
17 the Alternate do not ensure an equitable  
18 contribution for the Marina Coast Water  
19 District. While the Proposed Decision  
20 recognizes the need for an upfront buy-in as  
21 well as ongoing connection fees from the  
22 development of the former Fort Ord, they do  
23 not establish Commission review of these  
24 contributions.

25 Therefore, DRA recommends the  
26 Commission make two modifications.

27 First, the Commission should not  
28 allow an Application for recovery of any

1 costs above the cost cap unless Marina  
2 Coast's up-front buy-in has been received.

3 Second, the Commission should  
4 require Cal-Am to report on the connection  
5 fee formula and fees collected in each  
6 General Rate Case.

7 Although the Commission cannot order  
8 Marina Coast to contribute money by a date  
9 certain, it should verify that Marina Coast  
10 contributions materialize and are equitable.

11 Turning to governance. DRA supports  
12 the Proposed Decision because it gives the  
13 municipal advisor party status and the  
14 ability to dispute decisions reached by the  
15 advisory committee.

16 Party status will enable the  
17 municipal advisor, a ratepayer representative  
18 of the six Monterey Peninsula cities, to take  
19 ratepayer concerns regarding construction and  
20 operations to an independent third party for  
21 resolution.

22 The municipal advisor would play a  
23 key role in furthering equity and cost  
24 containment by reviewing proposals ranging  
25 from facility design elements to connection  
26 fees from the former Fort Ord.

27 DRA also supports placing the  
28 Monterey Peninsula Water Management District

1 on the advisory committee. Since advisory  
2 committee meetings may not be open to the  
3 public, an additional ratepayer  
4 representative on the committee would promote  
5 transparency.

6 I will return it to Diana for the  
7 conclusion.

8 MS. BROOKS: In sum, DRA urges the  
9 Commission to strengthen the cost containment  
10 and accountability provisions in both the PD  
11 and the Alternate as we have described.

12 While the project proponents have  
13 argued for modifications that can result in  
14 significant cost increases, DRA stresses that  
15 additional cost containment is needed to  
16 ensure cost decreases. \$3400 an acre foot,  
17 the equivalent amount in costs per acre foot  
18 of the initial cost cap, should be a ceiling  
19 and not become a floor. With effective  
20 oversight and cost containment provisions  
21 along with access to low-cost financing, the  
22 Regional Project cost should be in line with  
23 costs from other recent desalination  
24 projects.

25 Absent cost containment, however,  
26 this project could have negative impacts on  
27 the Monterey Peninsula ratepayers, the local  
28 economy and the future of desalination in the

1 United States.

2 DRA asks the Commission to  
3 incorporate its proposed modifications so  
4 that this project can advance with less risk  
5 of significant cost overruns.

6 Thank you.

7 ALJ MINKIN: Thank you.

8 Commissioner?

9 COMMISSIONER BOHN: Ms. Brooks, let me  
10 ask a couple of what seem to be threshold  
11 questions.

12 The first, I guess, is if they can't  
13 get \$150 million of grant money, what do we  
14 do, just unwind all this?

15 MS. BROOKS: We believe that when they  
16 come back they can make the best -- make a  
17 showing of what they did to get that grant  
18 funding and what efforts they went to. If  
19 it's still not available, at that time I  
20 think the Commission would need to review it,  
21 take comments from parties. And we need to  
22 look at other levers we can push to lower the  
23 cost because costs are a function of the  
24 financing the capital cost and the O&M costs.  
25 So maybe there's other ways we can tighten up  
26 on some of these other levers, because if the  
27 financing is just what it is, we got to make  
28 the best -- the proposal that we have put

1 forward would create the incentive and the  
2 time to make sure that that low-cost  
3 financing materializes.

4 COMMISSIONER BOHN: Part of  
5 the complexity of this case seems to me is  
6 that on the one hand the situation that we  
7 now face is untenable. On the other hand, as  
8 I listen to your comments, the situation that  
9 we propose is untenable. And so I'm  
10 perplexed because it seems to me this may be  
11 one of those cases where you can't walk  
12 halfway across the canyon. Either you walk  
13 across the canyon or you don't. And if you  
14 decide you are in the middle of the canyon  
15 and it was a bad idea, it's a little late.

16 So it's hard to see how we can  
17 calibrate or, frankly, anybody else can  
18 calibrate these kinds of reviews in any  
19 meaningful fashion along the way.

20 Suppose we have -- forget about how  
21 we do it -- suppose we have \$150 million,  
22 suppose we have a hundred million dollars in  
23 this and all of a sudden we find we can't get  
24 the grant money, the State is broke or  
25 something like that, the alternative is what?  
26 Padlock the door?

27 MS. BROOKS: I don't think anyone would  
28 imagine that this project would stop in its



1 tracks. If there are no other alternatives,  
2 we will have to make other methods to control  
3 costs. But that financing plan needs to be  
4 subject to review.

5 COMMISSIONER BOHN: Is your issue that  
6 you doubt -- strike that. Is your issue that  
7 you are concerned that Marina Coast and the  
8 other participants don't have adequate  
9 motivation to seek the lowest cost? Is that  
10 the issue?

11 MS. BROOKS: No. I don't know what the  
12 status of the State Revolving Fund is --

13 COMMISSIONER BOHN: I am talking about  
14 motivation of the parties now. Are we  
15 worried that --

16 MS. BROOKS: No. I was under the  
17 impression that the State Revolving Fund  
18 money might not be available until the  
19 project was at a more detailed level of  
20 design, that it is a process that takes a  
21 certain amount of time. And rather than  
22 short-circuiting that would be to bifurcate  
23 this financing plan, to allow the project to  
24 go forward while at the same time creating  
25 the time and the extra motivation also for  
26 the grantor who is looking to fund this  
27 project.

28 COMMISSIONER BOHN: How much money

1 would we be prepared to spend on the off  
2 chance that grant money is not available? At  
3 what point when you talk about the project  
4 going forward do we say, well, we can't get  
5 grant money and we now spent 20 million, 30  
6 million, 50 million? What do we spend?

7 MS. BROOKS: I am not fully prepared to  
8 answer that right this minute.

9 COMMISSIONER BOHN: Order of  
10 magnitude. What I am trying to get at is  
11 perhaps we don't have the luxury of assuring  
12 ourselves that we can reason this thing all  
13 the way through and at some point you have to  
14 start across the canyon. And you try to find  
15 that there's a bridge, and it may be a little  
16 bridge or a big bridge or it may be a swing  
17 from a rope, but at some point, once you make  
18 the leap, it seems to me at that point you  
19 don't have the luxury of simply saying we are  
20 now going to write off ratepayer expense 70  
21 million bucks or whatever the number is.

22 MS. BROOKS: That's true. And without  
23 the SRF funding at 6 percent, with no debt  
24 coverage, I think we are looking at something  
25 more like \$52 million for the annual revenue  
26 requirements, \$8 million a year more just for  
27 that. So we need to make the trade-offs.  
28 And you're right, there's a trade-off with

1 capital cost cap which we believe the initial  
2 cap is plenty high enough. It includes a  
3 generous 25 percent contingency, and we  
4 shouldn't even be thinking about these high  
5 level caps. If costs got that high and went  
6 over that, I think we would all be -- we  
7 would have to be questioning what went wrong  
8 here.

9 But there's the value engineering,  
10 the competitive procurement, the  
11 constructability review and all of these  
12 things. There could be mechanisms built in  
13 to capture those savings incentives to drive  
14 the costs down. What incentive is there now  
15 to come in much under the cap? People are  
16 talking as if the cap is a floor. The  
17 initial cost cap DRA considers as the cost  
18 cap. That's how we are viewing it. And we  
19 take it that seriously. Because these are  
20 ratepayers. The rate structure in Monterey  
21 is already very severe. We are in a down  
22 economy. Affordability is a real issue.  
23 People come to our public participation  
24 hearings complaining about 5, 7, 10 percent  
25 rate increases. We are talking about  
26 doubling in the best case scenario.

27 And to go to something that would be  
28 60, \$70 million when the current revenue

1 requirement is 43, I think we really got to  
2 work to be able to find ways to contain these  
3 costs.

4 COMMISSIONER BOHN: Aren't we in a  
5 situation -- it is hard for me to get worked  
6 up about comparing percentage increases in  
7 the situation when everybody agrees it is a  
8 crisis. The fact that some other districts  
9 go from 6 percent to 8 percent or 20 percent  
10 increase is a complaint, I can understand  
11 that in certain districts, but aren't we  
12 facing kind of a different situation here?  
13 The alternative is that there is simply no  
14 water for economic growth, period, the end.  
15 And so I am having trouble equating different  
16 percentage increases as a relevant argument.

17 MS. BROOKS: That was as an example.  
18 But I do believe that while parties talk  
19 about the severe economic impact on the  
20 community for no project, and I believe  
21 that's clearly a place we don't want to go,  
22 that if the costs for this project get too  
23 high, we are going to be in very similar  
24 situation. There's rate impacts that will be  
25 severe on businesses and families using more  
26 than the minimum amount of water. And if it  
27 is a doubling or tripling of rates, if  
28 someone is paying less than double, that

1 means someone else is paying more. So  
2 somebody might be paying triple or quadruple  
3 if someone else is paying half.

4 So how those economic impacts will  
5 play out has yet to be seen. But there could  
6 also be response to the high water rates that  
7 causes people to cut back. Will Cal-Am even  
8 need 8,800 acre feet of water if the costs  
9 get that high? Do ratepayers fully  
10 understand the impact on their bills that  
11 this project will bring? I think if they did  
12 we would hear a lot more than the numerous  
13 letters we have already received urging the  
14 Commission to support DRA's recommendation.

15 COMMISSIONER BOHN: We had, as I  
16 recall it, we had hours and hours and hours  
17 and hours of hearings about that, and we gave  
18 an awful lot of people an opportunity to  
19 complain, and many did. But have we sort of  
20 crossed that issue? The community has had a  
21 very wide opportunity to talk not only to us  
22 but to you folks and others. ]

23 And I understand, nobody wants  
24 higher rates. As a consumer, I have no  
25 interest in higher rates either. On the  
26 other hand, there are different alternatives.

27 And what we're really talking about  
28 now, I would argue or suggest to you, is not

1     whether the rates are going up by some  
2     percentage but whether or not we get  
3     the least increase in rates consistent with  
4     getting the task before us finished.

5             And the task before us is that we  
6     can wash our hands of the whole thing and  
7     say, well, too bad, we didn't get it done;  
8     not our problem.

9             MS. BROOKS:   Max wants to add on.

10            MR. GOMBERG:   I think, Commissioner,  
11     the way that we view it is the way to try and  
12     attempt to get that least increase in rates  
13     is for the public agencies to bring in  
14     whatever financing, low-cost financing in  
15     grants is available.

16            COMMISSIONER BOHN:   Agree.

17            MR. GOMBERG:   And we don't know what's  
18     available.

19            And our concern is that if all of  
20     the debt goes out at once, that incentive  
21     that you mentioned is reduced.  Because the  
22     money to construct the project absent grants  
23     and loans does not need to be acquired.

24            COMMISSIONER BOHN:   Is there some  
25     suggestion that you or, frankly, anybody else  
26     would like to make as to some mechanism, some  
27     assurance, some pledge that the parties might  
28     give that they will in good faith bend all

1 efforts to get this kind of funding?

2 I mean, I'm not asking for the  
3 answer now. We don't have time for that, but  
4 perhaps in your comments.

5 The concern I think I'm hearing is  
6 that you are not convinced that since  
7 the ratepayers are essentially paying  
8 the offtake, whatever that happens to be in  
9 your judgment, that there is an adequate  
10 incentive for the actual borrowers, namely  
11 Marina Coast, to seek the lowest rates  
12 possible in grants.

13 I think it's in their own interest  
14 to do so because at the end of the day, they  
15 are on the hook for this money.

16 But at the end of the day, are  
17 there other pledges or mechanisms that any of  
18 you might suggest?

19 And again, not now but somehow in  
20 your comments.

21 MR. GOMBERG: We'll give this full  
22 consideration and address it in the comments.

23 ALJ MINKIN: And just to sort of put  
24 a bow on it because I think that this  
25 discussion has really crystallized the very  
26 difficult issues that the Commission will be  
27 struggling with, we have a severe water  
28 supply problem. Both the PD and the APD

1     acknowledge that. And in my view, there's no  
2     way to simply conserve our way out of this or  
3     even find a way to address the recycled  
4     water, et cetera. It's really a supply issue  
5     at this point.

6             Now that being said, where is the  
7     balance? How are ratepayers protected? How  
8     do we ensure that the public agencies seek  
9     the least cost financing vehicles possible?

10            They have said that they will.

11            Both the PD and APD find that those  
12     are key provisions to this project. But at  
13     least both the PD and APD provide  
14     the opportunity to review the financing plans  
15     to understand how those will impact  
16     ratepayers.

17            Now as I understand it, DRA is  
18     proposing now an extra hurdle that I don't  
19     think has been considered.

20            MS. BROOKS: I guess we didn't intend  
21     it to be an extra hurdle. We intended it to  
22     be something that would keep the project on  
23     the critical path and move forward more  
24     quickly and still retain the review that the  
25     Commission had --

26            ALJ MINKIN: Okay.

27            MS. BROOKS: -- for the other portion  
28     of it.



1           Nevertheless, I would add that what  
2 is in the PD and the APD now, even though it  
3 doesn't go as far as what DRA would like, we  
4 would hate to see that eroded because what's  
5 there is, you know, is a beginning of what we  
6 think should be there.

7           It doesn't go far enough, in our  
8 opinion, but we want it to be strengthened  
9 and tightened up, not eliminated, so... .

10          ALJ MINKIN: Okay, thank you.

11          And one other question, and that  
12 was on the O&M costs.

13          And you --

14          MS. BROOKS: Yeah.

15          ALJ MINKIN: -- had proposed that the  
16 scope be expanded.

17          MS. BROOKS: I wasn't sure if it was  
18 expanded or clarified, because DRA made this  
19 recommendation on the record during  
20 the proceeding to have a separate operations  
21 and maintenance phase or a proceeding to  
22 consider all of the issues that would be  
23 inherent to putting together an O&M contract.

24          For example, in Tampa, they  
25 contracted over a hundred pages, a lot of  
26 details on the risk and the cost incentives,  
27 and who was bearing -- who's responsible for  
28 what, and the qualifications, and so on and

1     so forth.

2                 So we interpreted the Commission's  
3     Ordering Paragraph to refer to that, but it  
4     just says a separate phase on O&M costs.

5                 And since the costs are so  
6     intricately tied up with that type of  
7     contract, it's similar to the water purchase  
8     agreement. There's a lot of nitty-gritty in  
9     there that will affect how those costs -- how  
10    high is the level of those costs turn out to  
11    be.

12                ALJ MINKIN: Is that then to ensure  
13    that the O&M costs will not become  
14    prohibitive to the Cal-Am ratepayers?

15                MS. BROOKS: Yeah. Because under  
16    the WPA, everything is a pass-through to the  
17    ratepayer.

18                And there's lots of contracts in  
19    public-private partnerships where usually  
20    it's the reverse. You've got a public agency  
21    contract and a public company to operate  
22    something and they take the risk for a price.  
23    And there's a lot of detailed provisions in  
24    there.

25                In this case, it's the public  
26    agencies who are going to pass the risk right  
27    back to the ratepayer.

28                So we're here to defend

1 the ratepayer and say the Commission needs to  
2 look that over.

3 I mean, we're creating -- this is  
4 two-thirds of the Monterey water supply.  
5 We're creating a new system for regulating  
6 the cost of that water. We need to do it  
7 right. It's going to last a century.

8 ALJ MINKIN: Thank you.

9 Ms. Davi.

10 MS. DAVI: Yes.

11 ARGUMENT OF MS. DAVI

12 MS. DAVI: Good afternoon. My name is  
13 Christine Davi with the City of Monterey.  
14 And the Monterey City Council authorized me  
15 to come here today with a statement that they  
16 prepared.

17 Monterey supports the water project.  
18 Governance is an issue. We  
19 appreciate Administrative Law Judge  
20 Minkin's support of the governance  
21 issue and we do not want to delay  
22 the project.

23 Thank you.

24 COMMISSIONER BOHN: Thank you.

25 ALJ MINKIN: Thank you.

26 Mr. Laredo.

27 MR. LAREDO: Thank you.

28 The cord here doesn't quite reach,

1 so we're going to switch.

2 ALJ MINKIN: Off the record just for  
3 a moment.

4 (Off the record)

5 ALJ MINKIN: Back on the record,  
6 please.

7 ARGUMENT OF MR. LAREDO

8 MR. LAREDO: Thank you.

9 Good afternoon. My name is David  
10 Laredo. I'm offering comments on behalf of  
11 the Monterey Peninsula Water Management  
12 District. Present with us also are  
13 the chairperson of the board, Regina Doyle;  
14 the vice chair, Bob Brower; and general  
15 manager, Darby Fuerst.

16 First, I'd like to join the other  
17 participants in expressing and offering our  
18 appreciation and gratitude for the hard work  
19 of both you, Judge Minkin and  
20 Commissioner Bohn, who have guided  
21 the parties through this lengthy process.  
22 Your efforts have presented, we believe, in  
23 relatively short order a set of well  
24 considered draft decisions.

25 The Water Management District Board  
26 carefully reviewed the two decisions and has  
27 authorized me to make the statements I'm  
28 making.

1           In large part, the district  
2           endorses the Alternate Proposed Decision but  
3           asks that select modifications be made to the  
4           APD. It is our belief that change is needed  
5           to effect a just and reasonable settlement in  
6           the public interest.

7           First, the district is concerned  
8           that the decision does not afford  
9           the municipal advisor a full voice. And  
10          importantly notes that the advisory seat as  
11          proposed fails to provide representation for  
12          many, many Cal-Am ratepayers. Not only is  
13          there inadequate representation for water  
14          users in the City of Monterey, the decision  
15          does not provide fair representation for  
16          those residing in unincorporated areas.  
17          These include the entirety of Pebble Beach,  
18          the Del Monte Forest, Carmel Valley, Jack's  
19          Peak area, and Greater Carmel outside  
20          the municipal boundaries.

21          This oversight denies fair  
22          participation to over 50 percent of Cal-Am's  
23          ratepayers. Over 65 percent of Cal-Am water  
24          use occurs in the unincorporated area and in  
25          the City of Monterey.

26          In addition, the Water Management  
27          District renews its request that it be  
28          afforded a seat on the advisory committee.

1 This will ensure representation for all  
2 ratepayers, and this voice will also ensure  
3 that integrated water management for all of  
4 Monterey Peninsula water resources can be  
5 achieved. That is the key objective  
6 recognized by the state legislature when it  
7 created the Water Management District.

8 The settling parties note that this  
9 is not a material change to settlement. They  
10 have added members to the advisory committee.  
11 It can be done without a material change.

12 In its written comments,  
13 the district plans to address several  
14 ambiguities in the APD. Key among these is  
15 the lack of detail needed to effect some of  
16 the purposes described in the draft. For  
17 example, the Water Management District  
18 applauds the contribution required of Marina  
19 Coast Water District, particularly by way of  
20 the contributed connection charges, but is  
21 concerned that this requirement lacks  
22 sufficient detail to ensure full  
23 implementation.

24 We plan to present language that  
25 will address this ambiguity in our written  
26 comments.

27 Again, I'd like to underscore that  
28 the district is pleased with the decisions,

1 and that it is our perception that they will  
2 allow the peninsula to solve its water  
3 shortage. Nonetheless, it is our view that  
4 each decision is a work in progress and  
5 requires fine-tuning to ensure full and fair  
6 representation, and to ensure that there's an  
7 equitable sharing of the significant costs.

8 We believe this these modifications  
9 will be able to be made to satisfy  
10 the public's interest.

11 I'd like to reiterate that the  
12 Water Management District desires to achieve  
13 this water solution and will continue to  
14 tailor its participation to meet this goal.

15 Thank you.

16 COMMISSIONER BOHN: Mr. Laredo, can  
17 I ask you a question?

18 MR. LAREDO: Yes, sir.

19 COMMISSIONER BOHN: The issue of  
20 adequate representation of the ratepayers  
21 keeps coming back and back and back. It's my  
22 impression that the Public Utilities  
23 Commission is the custodian of  
24 the ratepayers' interest.

25 Have I missed something?

26 MR. LAREDO: No. You are absolutely  
27 correct. But the Public Utilities Commission  
28 is not going to have a participant in

1 the decision making that will be made at the  
2 advisory committee level. That's going to  
3 include how the project is operated.

4 And from our perspective, from the  
5 district's perspective, how the project is  
6 operated is also going to impact the other  
7 water resources of the Monterey Peninsula.

8 COMMISSIONER BOHN: But at the end of  
9 the day, the jurisdiction of the Public  
10 Utilities Commission extends only to Cal-Am.  
11 And whatever happens to Cal-Am's ratepayers  
12 is still subject to our approval, unless  
13 I missed something.

14 MR. LAREDO: No. You are correct. It  
15 is Cal-Am and its ratepayers. But our  
16 interests also go to the impacts of the water  
17 supply practices on the community. And that  
18 comes back to the ratepayers because the  
19 costs of those impacts are borne and passed  
20 through to -- by Cal-Am to the ratepayer.

21 COMMISSIONER BOHN: With our approval.

22 MR. LAREDO: Yes.

23 COMMISSIONER BOHN: Is your concern  
24 principally -- and you made this point, it  
25 sort of slipped in there and I want to make  
26 sure I got it. Is your concern  
27 the coordination of operations?

28 You all made that point in



1 the past, that given what you all do and  
2 given the purpose for which you have been  
3 created, that coordination and cooperation,  
4 the implementation of the distribution  
5 process, as it were, is facilitated by you  
6 all sitting around the table.

7 Is it that is what's your concern?

8 MR. LAREDO: That is a key part of our  
9 concern, yes.

10 And that coordination goes to  
11 managing the disparate water supply sources  
12 that Cal-Am will use. Cal-Am will continue  
13 to use Carmel River water each after this  
14 project is operational. Cal-Am will continue  
15 to use Seaside Basin water. Cal-Am will  
16 continue to use aquifer -- recovered water  
17 from the aquifer storage project that the  
18 district does have an operational role in.

19 So that -- those -- managing those  
20 different sources is important.

21 And finally, until the environment  
22 of the Carmel River is fully remediated, the  
23 District has an ongoing effort there that is  
24 greatly impacted when Cal-Am will continue to  
25 use Carmel River water. And that will be  
26 turned on and off, depending upon other  
27 supplies available to it.

28 COMMISSIONER BOHN: Thank you.

1 ALJ MINKIN: Thank you.

2 MR. FOGELMAN: Your Honor, I'm  
3 wondering if we might have a five-minute  
4 recess to gather our thoughts before we do  
5 a ten-minute rebuttal.

6 COMMISSIONER BOHN: That's fine with  
7 me.

8 ALJ MINKIN: All right. That's fine.  
9 We'll be in recess for five  
10 minutes.

11 (Recess taken)

12 ALJ MINKIN: Please come to order.

13 Please be seated and come to order.

14 Thank you.

15 Mr. Fogelman.

16 MR. FOGELMAN: Yes, your Honor.

17 I think Mr. Carroll will start us off.

18 ALJ MINKIN: All right. And Settling  
19 Parties have ten minutes for rebuttal.

20 MR. FOGELMAN: Thank you very much.

21 CLOSING ARGUMENT OF MR. CARROLL

22 MR. CARROLL: Thank you very much for  
23 the break, your Honor and Commissioner Bohn.

24 The first thing I'd like to deal  
25 with is the representation issue.

26 All areas of the county are fully  
27 represented in this process by the Monterey  
28 County Resources Agency whose boundaries are

1 co-extensive with the entire county, and  
2 whose board ex-officio is the Monterey County  
3 Board of Supervisors.

4 The Peninsula is specifically  
5 represented by two members of the board of  
6 supervisors. Those two members then appoint  
7 two directors on the board of directors.  
8 They have a two-step budgeting process that  
9 is fully public, is rigorous.

10 Politics, as you've seen, your  
11 Honor, is a contact support in Monterey.

12 (Laughter)

13 MR. CARROLL: And it's done in a fish  
14 bowl. And there's no way that anybody in  
15 the public who has problems with what any of  
16 these agencies are going will do anything but  
17 come and tell us.

18 So that's the first thing.

19 The second thing has to do with  
20 O&M.

21 As I said briefly in my opening  
22 remarks, O&M is covered by 6.4(l) and 6.5(h)  
23 plus 6.6 of the WPA, all of which together  
24 basically ensures that an independent third  
25 party will look at those costs if the parties  
26 cannot agree on them.

27 And one of the things that astounds  
28 me here is that people seem to act as if

1 we're looking to waste money.

2 You specifically asked, Do you not  
3 trust them to do the right thing, and you  
4 really didn't get an answer.

5 The question is, are we going to go  
6 out and violate the law and behave weirdly  
7 and strangely and criminally, or are we going  
8 to do what we are supposed to as public  
9 agencies?

10 There's not a bit of evidence in  
11 this record, and DRA had the opportunity to  
12 dig it up and present it, that indicates that  
13 we will do anything other than behave.

14 ALJ MINKIN: I would put the question  
15 a slightly different way, Mr. Carroll. And  
16 that is, do the public agencies have  
17 the incentive to ensure that costs allocated  
18 to Cal-Am ratepayers are as low as they  
19 possibly can be and still get the project  
20 built?

21 MR. CARROLL: And the answer to that is  
22 yes. It's all over the WPA.

23 And we'll -- there was not time  
24 today to go through all of those. In our  
25 comments, we'll go through all those sections  
26 and explain how the incentives are there.  
27 The incentives being if you don't do what  
28 you're supposed to do, you're in breach of

1 contract. Not to mention we have  
2 the incentive because we're supposed to do  
3 the right thing. We're public agencies.

4 That leads me then to the last  
5 point which I have said some of about  
6 already. And that is that as this case has  
7 gone forward, we have dealt over and over  
8 again with DRA not being willing to trust  
9 that we will do what we are supposed to do.  
10 Yet, over and over again, we've explained all  
11 the things we have to do in terms of spending  
12 money reasonably, in terms of what the WPA  
13 says, and so forth as to why we will do the  
14 right thing.

15 If you heard what they said in  
16 the last few minutes, they are basically  
17 saying you, Commission, have to regulate with  
18 the public agencies. That's what they have  
19 been saying. They're saying you have to  
20 review the financing plan.

21 The Commission doesn't have  
22 jurisdiction to review the financing plan.  
23 It's our financing plan. You, Commission,  
24 have to do other things. The Commission  
25 doesn't have jurisdiction.

26 What the Commission has to do is  
27 realize the public agencies will behave  
28 properly. And that's ultimately

1 the Commission decision has to make. The  
2 Commission has to decide whether it's going  
3 to listen to people who are motivated by fear  
4 or it's going to listen to people who want to  
5 get this done and do it right.

6 ALJ MINKIN: Or again, I would put it  
7 slightly differently, although of course this  
8 is your closing argument.

9 (Laughter).

10 ALJ MINKIN: However --

11 MR. CARROLL: Not anymore, your Honor.

12 (Laughter)

13 ALJ MINKIN: Just can't resist.

14 But again, I think that if  
15 the situation were reversed and  
16 the ratepayers of Marina Coast Water District  
17 were review- -- were shouldering the costs,  
18 would you feel the same way in terms of  
19 jurisdiction and approval and review?

20 So I guess what I'm asking you is  
21 to put sort of a different set of glasses on  
22 to look at this.

23 MR. CARROLL: Your Honor, I think that  
24 that question, with respect to specifically  
25 Marina Coast Water District, should be  
26 answered by Mr. Fogelman.

27 I can tell you --

28 I'm not trying -- it's a question

1 he should answer.

2 I would like to think, based on the  
3 relationship I have with my client, that what  
4 we would do is what we always do which is  
5 follow the law. And if the law says we don't  
6 get to look at their costs, the law says we  
7 don't get to look at their costs.

8 That's what we're required to do.  
9 That's what I as a lawyer strongly feel my  
10 clients are always required to do.

11 So I'll simply close by saying  
12 I think the right choice here is to go ahead  
13 and approve this settlement without  
14 substantial modification.

15 And I really hope that you guys  
16 make the right choice.

17 Thank you very much.

18 ALJ MINKIN: Thank you.

19 CLOSING ARGUMENT OF MR. FOGELMAN

20 MR. FOGELMAN: Thank you, your Honor.

21 You did ask some questions so, in  
22 computing the time.

23 But first of all with respect to  
24 the governance issue, just want to bring  
25 up -- and this is a public document that is  
26 not in the record but it's subject to  
27 judicial notice -- and that is, the City  
28 of Monterey who speak here today went out and

1     commissioned a study with respect to  
2     the governance issue, and actually paid  
3     a consultant, UFI, Urban and Futures  
4     Incorporated, and presented that study to  
5     their board.

6             And that study said, this was  
7     a commissioned study, in Conclusion 2:  
8     Changing -- quote:

9             Changing only the governance  
10            structure portion of the WPA to give  
11            the municipal advisor the right to  
12            call for binding arbitration would  
13            adversely impact the marketability  
14            of the bonds needed to finance  
15            construction of the regional water  
16            project to the point where  
17            the overall project as currently  
18            structured would be rendered  
19            unworkable.

20            End quote.   ]

21            And that is from a study  
22     commissioned by one of the proponents of the  
23     Regional Project. So I wanted to point that  
24     out with respect to the governance issue.

25            With respect to financing and your  
26     very legitimate questions about whether the  
27     agencies have an incentive to be  
28     least-costed, they are required by



1 Constitution and Constitutional and statutory  
2 provisions to be least cost. They cannot  
3 give gifts of public funds. They do not make  
4 money. They are nonprofit. And they are  
5 required to charge the lowest just and  
6 reasonable rates to their ratepayers. And  
7 they cannot discriminate with respect to  
8 other ratepayers so that when they need  
9 water, the rate for that water, the charge  
10 for that water, will be identical whether it  
11 is charged to Marina Coast customers or  
12 Cal-Am customers.

13 In addition, as one example, we take  
14 the position that the WPA and the settlement  
15 agreement cover all of the concerns. If you  
16 look at 7.1 A of the WPA, it says precisely  
17 there, the parties have agreed to this, that  
18 following the effective date, which would be  
19 the date of approval, the parties will work  
20 cooperatively to prepare, evaluate and employ  
21 alternative financing plans that will best  
22 utilize the financing and grant opportunities  
23 available to MCWD and MCWRA with an objective  
24 to obtain the maximum financing of the  
25 project facilities at the lowest overall  
26 total cost given the existing and anticipated  
27 market conditions.

28 They are obliged by the WPA to find

1 a least-cost approach to financing. And as  
2 we said earlier, they are pursuing the  
3 prudent step of potentially hiring an  
4 independent third party to confirm their  
5 financing.

6 In addition, it is my understanding  
7 that you cannot bid a project unless it is  
8 fully financed. And that goes back to what  
9 Commissioner Bohn said earlier. You can't  
10 get halfway across the canyon and then talk  
11 about the remainder of the financing. This  
12 project will be, as I understand it,  
13 100 percent financed up front, but one of the  
14 proposals is to have the financing be subject  
15 to calls which means that the initial revenue  
16 bonds that may be issued can be essentially  
17 refinanced when SRF funding, grants and other  
18 lower cost funding opportunities become  
19 available.

20 So that is something that the  
21 parties here are pursuing. And I will  
22 represent to the Commission that the  
23 agencies, MCWRA and MCWD, have each spent to  
24 date hundreds of thousands of dollars  
25 pursuing SRF grants and other low-cost  
26 financing opportunities, and they intend to  
27 continue to do so.

28 So long story short, the incentive

1 is there, the legal requirement is there, it  
2 is in the WPA, it is enforceable under the  
3 WPA, it is enforceable in the courts. And as  
4 Mr. Carroll said quite clearly, we really  
5 think the Commission, if there is going to be  
6 a public/private partnership, needs to trust  
7 its sister independent jurisdictions here and  
8 let the public agencies side by side with the  
9 PUC and the PUC regulated entity put forth  
10 this project and do it to benefit all of  
11 their ratepayers.

12 CLOSING ARGUMENT OF MS. DOLQUEIST

13 MS. DOLQUEIST: Thank you. I have some  
14 relatively brief comments to wrap it up.

15 DRA today suggested multiple  
16 additional filings and levels of review. And  
17 any CPUC filing or proceeding takes months,  
18 if not years, to conclude. So these  
19 additional conditions and recovery, they end  
20 up increasing the risk for  
21 California-American Water.

22 If DRA wants to reduce the financing  
23 costs, it is really going about it the wrong  
24 way with these suggestions. More risk to  
25 California-American Water means higher  
26 financing costs.

27 And I want to read a brief excerpt  
28 from the rebuttal testimony of James

1 Kalinovich that gets directly to this point.

2 California-American Water is the  
3 primary source of cash flows to pay  
4 the debt service and operating  
5 expenses. Bond investors must be  
6 confident that California-American  
7 Water has the financial wherewithal  
8 to meet its obligations under the  
9 WPA before they will invest in the  
10 bonds. When the bond investors and  
11 rating agencies evaluate this  
12 project, they will analyze both the  
13 construction phase risk and the  
14 operating phase risk.

15  
16 On slightly different topic,  
17 California-American Water already coordinates  
18 with MPWMD. This will continue, and there is  
19 nothing in the WPA that will change or  
20 prevent this ongoing coordination.

21 So let me wrap up by saying that  
22 California-American Water and the settling  
23 parties urge that the settlement agreement  
24 and the Water Purchase Agreement be adopted  
25 without material modifications.

26 Thank you very much.

27 ALJ MINKIN: Thank you.

28 Do you have any questions or closing

1 remarks, Commissioner?

2 COMMISSIONER BOHN: I would like to  
3 make just a couple of closing remarks if I  
4 might.

5 Again, I want to thank all of you  
6 for your dedication and your interest and  
7 your hard work. And those of you who have  
8 earned the hundreds of thousands of dollars  
9 that have been spent, I applaud your  
10 dedication.

11 This is obviously sort of a clearly  
12 complex issue. I am looking forward to the  
13 discussions next week, and I would urge  
14 perhaps futilely but I am going to try it  
15 anyway, I would urge that if there are any  
16 conversations that need to take place between  
17 now and then, that they take place. That's  
18 really up to you guys.

19 And the final thing is -- and this  
20 is probably tangential and in large part  
21 irrelevant but I want to say it anyway -- I  
22 want to commend the public officials, whether  
23 you are on the pro side or the anti side, for  
24 showing the kind of leadership and dedication  
25 you have. Having been in odd places  
26 occasionally as a public official, it is not  
27 an easy thing to do. And I know some of you  
28 are taking a lot of heat from some of your

1 constituents and from some of your colleagues  
2 and all the rest of it. And I just want to  
3 say it is refreshing and in a time of a  
4 fairly dismal outlook on the way the public  
5 seems to work around this state and country,  
6 it is refreshing and encouraging to see that  
7 you guys have the guts and the courage to  
8 actually be leaders. And I want to  
9 compliment you all for doing it.

10 ALJ MINKIN: Thank you very much,  
11 everyone, for your attendance today.

12 Just a reminder that opening  
13 comments are due on November 17th, reply  
14 comments on November 22nd. There is also a  
15 separate pleading on whether or not the  
16 modifications would be accepted by the  
17 Settling Parties. And then the opportunity  
18 for reply comments. Same dates for those  
19 comments.

20 And as Commissioner Bohn mentioned,  
21 there is an all-party meeting scheduled for  
22 November 22nd. So it's a busy couple of  
23 weeks.

24 Thank you. We are adjourned.

25 (Whereupon, at the hour of  
26 3:40 p.m., this oral argument was  
concluded.)

27 \* \* \* \* \*